

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1107 of 1995

to

FIRST APPEAL No 1123 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

AMARSING HIRABHAI & 7

Versus

SPL LAQ OFFICER & 2

Appearance:

MR AJ PATEL for Petitioners

Mr.S.S. Patel, AGP, for the respondent in F.A. Nos.
1107/95 to 1115/95

Mr. P.G. Desai, GP, for the respondent in F.A.
Nos.1116/95 to 1123/95

CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE D.P.BUCH

Date of decision: 24/01/2000

COMMON ORAL JUDGMENT : (Per: Kadri, J.)

1. Appellants, who are successors and legal heirs of the original claimants, have filed this group of first appeals under Section 54 of the Land Acquisition Act, 1894 (to be referred to as 'Act' for short) read with Section 96 of the Code of Civil Procedure, 1908, for enhancement of compensation by challenging common judgment and award dated April 30, 1994, rendered by the learned Assistant Judge, Bharuch, in Land Reference Cases Nos. 823 of 1989 to 839 of 1989. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. Executive Engineer, Panchayat & Irrigation Division, Bharuch, proposed to the Government to acquire lands of the appellants situated in village Khuper Bershan, Taluka Dediapada, District Bharuch, for public purpose of 'Middle Irrigation Scheme'. The said proposal was scrutinized by the Government and notification to acquire lands of the appellants came to be issued under Section 4(1) of the Act which came to be published in the Government Gazette on August 11, 1988. The land owners filed their objection under Section 5A of the Act against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Khuper Bershan which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of Middle Irrigation Scheme. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on December 1, 1988. Interested persons were, thereafter, served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.1500/per Are, but, having regard to the materials placed before him, the Land Acquisition Officer made his award on January 27, 1989, and offered compensation to the claimants at the rate of Rs.125/- per Are for the acquired lands. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the

Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Bharuch, which were numbered as Land Reference Cases Nos. 823 of 1989 to 839 of 1989. All the land reference cases came to be consolidated and the parties led common evidence in Land Reference Case No.831 of 1989.

3. Before the Reference Court also, the appellants claimed compensation at the rate of Rs.1500/- per Are. To substantiate their claim, the appellants examined Gambhirbhai Damaniabhai Vasava at Exh.13. No other witness was examined either by the claimants or the acquiring body. The award of the Land Acquisition Officer was produced at Exh.15. On overall appreciation of oral as well as documentary evidence, and the arguments advanced by the learned counsel for the parties, the Reference Court determined market price of acquired lands at the rate of Rs.290/per Are. The Reference Court also awarded solatium at 30% p.a. under Section 23(2) of the Act and additional amount at the rate of 12% under Section 23(1-A) of the Act. The Reference Court deducted 5% from the amount of compensation as the lands were new tenure lands. The appellants have challenged the impugned common judgment and award by filing this group of appeals and have claimed enhanced compensation at the rate of Rs.1500/per Are minus the compensation awarded by the Reference Court.

4. Learned counsel, Mr. A.J. Patel, appearing for the appellants, has submitted that the Reference Court, even though had arrived at the conclusion that the claimants were getting net income of crop yield of Rs.1100/- per Are, had awarded only Rs.290/- per Are as compensation for the acquired lands, which is, ex-facie, illegal. Learned counsel for the appellants has further submitted that the claimants had produced sufficient evidence with regard to crops which were raised on the acquired lands. It is further submitted that the acquired lands were situated in the tribal area, where the cost of cultivation is less as compared to the developed areas and, therefore, the cost of cultivation cannot be more than 30% of the total gross agricultural income. Learned counsel for the appellants further submitted that the Reference Court had erred in deducting 5% from the amount of compensation on the ground that the acquired lands were new tenure lands. It is further submitted that the acquired lands were the only source of

income of the appellants and, therefore, the appellants should be awarded adequate compensation for losing their lands which came to be acquired for the public purpose of 'Middle Irrigation Scheme'. It is submitted by learned counsel for the appellants that the appellants have claimed a reasonable compensation and, hence, these appeals deserve to be allowed.

4. Mr. P.G. Desai, learned Government Pleader, assisted by Mr.S.S. Patel, learned Assistant Government Pleader, for the respondents, has vehemently argued that the Reference Court had determined the market value of the acquired lands by taking into consideration income of crops raised and also situation and fertility of acquired lands. The learned counsel for the respondents submitted that the appellants had not led any cogent and reliable evidence to establish that they were entitled to compensation at the rate of Rs.1500/- per Acre and the evidence produced by the appellants was insufficient for determination of market price of acquired lands on the basis of 'yield method'. The counsel for the Government submitted that the Reference Court had erred in relying upon the award of the Land Acquisition Officer Exh.15 for the determination of market value of the acquired lands on yield basis. The counsel for the Government further submitted that the acquired lands were non-irrigated lands and it was not possible for the appellants to raise four crops in a year. It is submitted by learned counsel for the Government that the Reference Court had awarded a just and adequate compensation to the appellants and the appeals deserve to be dismissed with costs.

5. We have heard learned counsel for the parties at length. We have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding this group of appeals.

6. Claimant of Land Reference Case No.835 of 1989, Gambhirbhai Vasava, at Exh,13, had deposed before the Reference Court that the claimants were raising crops of paddy, tuwer, juwar, ground-nut, etc. on the acquired lands. He deposed that they used to get 45 mounds of paddy per Acre in a year and the price of paddy was Rs.80/- per mound. He deposed that the claimants were raising crop of tuwer and total yield of tuwer per Acre was 50 mounds and the price of tuwer was Rs.200 per mound. As per the evidence of this witness, the claimants were raising crop of juwar on acquired lands and yield of juwar per Acre was 50 mounds and price of

the said crop was Rs.45/per mound. The witness claimed that the appellants were raising crop of ground-nut and total yield of ground-nut per Acre was 40 mounds whereas price of ground-nut was Rs.50/- per mound. The evidence of witness further disclosed that the claimants were also raising fodders and grass and the total income therefrom was Rs.1000/per Acre. Witness Gambhirbhai claimed that the acquired lands were situated at the distance of 19 kms. from Dediapada. The acquired lands were connected with tar road to villages Mandi Dediapada, Sagbara Mandvi, Umarpada Kevdi, etc. The witness further claimed that total population of village Khuper Bershan was 1000. He claimed that the agriculturists used to get net income of Rs.8000 to 10000 per Acre out of crops raised on the said lands. The witness stressed that, during the last 20 years, no sale had taken place near or adjoining area of the acquired lands. The witness in cross examination admitted that the acquired lands were situated in a remote area and there was no facility of Railway. He also admitted that the acquired lands were non-irrigated and dry lands. The witness admitted that the appellants had no documentary evidence in support of the prevailing price of the agricultural produces raised on acquired lands.

7. The claimants, i.e. appellants, to justify their claim that they were raising crops of paddy, juwar, tuwer and ground-nut on the acquired lands, had placed reliance on the award of the Land Acquisition Officer with regard to the acquired lands which were subject of matter of challenge in the Land Reference Cases filed before the District Court, Bharuch. It is settled principle that award of Land Acquisition officer is merely an offer and cannot be made basis for determination of compensation with regard to acquired lands. However, learned counsel for the appellants placed reliance on the decision of the Supreme Court in the case of Land Acquisition Officer & Sub-Collector, Gadwal vs. Sreelatha Bhoopal, reported in (1997) 9 Supreme Court Cases 628. The facts before the Supreme Court were that the Reference Court and the High Court in determining market price of the acquired lands had placed reliance on the sale deed in respect of small piece of land. The Supreme Court ruled that it is settled principle that small pieces of land cannot offer the same market value as when a large tract of land is purchased in an open market by a willing and prudent purchaser. However, in order to do substantial justice and keeping in mind the settled legal principle, ruled that the Court has to put itself in the armchair of a prudent purchaser and put the question to itself whether

the land, in the given circumstances, would fetch the same market value as is likely to be determined by the Court. Relying upon the award of the Land Acquisition Officer, the Supreme Court observed as under;

"Though the award of the Land Acquisition Officer is not evidence *stricto sensu* with a view to do substantial justice, we looked into it and considered the material collected therein."

The observations of the Supreme Court in Land Acquisition Officer & Sub-Collector, Gadwal vs. Sreelatha Bhoopal (*supra*) are applicable to the facts of the present case. Admittedly, the lands acquired were situated in remote area and no sale agreement had taken place since last 20 years prior to the date of acquisition. Even the Land Acquisition Officer, in his award, had not referred to any sale transaction for determining market price of acquired lands. Therefore, the Reference Court and the Land Acquisition Officer were left with no other alternative but to take resort to yield method to determine market price of acquired lands. In the award Exh.15 of the Land Acquisition Officer, it was observed that the claimants were raising four different crops on the acquired lands in a year. The yield of four crops per Acre, as observed by the Land Acquisition Officer, is tabulated as under:

Crops Approx Market Gross Appox Net income
produc- rate per income expense per Acre
tion mond h for it
in
mond h

Paddy 45 60 2700 810 1890/-
Tuver 50 190 9500 2850 6650/-
Jowar 50 40 2000 600 1400
Ground
nut 35 200 7000 2100 5900

14840/-

As per the award of the Land Acquisition Officer, price of paddy per mound was Rs.40 to Rs.60, whereas price of tuver per mound was Rs.190 and juwar Rs.30 to Rs.35. As per the award of the Land Acquisition Officer, price of ground was Rs.215 per mound. We noticed that the market price of crops adopted by the Reference Court cannot be

said to be excessive as compared with the price fixed by the Land Acquisition Officer.

8. The gross income of four crops raised on acquired lands comes to Rs.21200/-. If figure of 21200 is deducted by cost of cultivation with 50%, net income would be Rs.10,600/-. Looking to the fertility of the acquired lands and in view of the fact that acquired lands are non-irrigated lands and the agriculturists were depending on seasonal rains, it was not possible for the claimants to raise more than one crop in a year. Therefore, we divide the net income of Rs.10,600/- by figure of Rs.4/-, as figure of Rs.10,600/- was arrived at by taking income of four crops. If the amount of Rs.10,600/- is divided by 4, it would come to Rs.2650/-. Rs.2650/- would be the net income per Acre. The figure of 2650 will have to be divided by figure of 40 because one acre is equivalent to 40 gunthas or 40 Are. If the figure of 2650 is divided by 40, it would come to Rs.66.25 ps per Are. As per the settled legal principle laid down by the Supreme Court in the case of State of Gujarat and others vs. Rama Rana and others, 1997 (3) GLR 1954, multiplier of 10 should be applied in computation of capitalisation of value of agricultural land. If multiplier of 10 is applied, then, price of acquired agricultural land would be Rs.662.50 ps per Are. It has become evident that the acquired lands were non-irrigated and the agriculturists depended mainly on rains. Because of uncertainty prevailing in the area where the acquired lands were situated, in our opinion, it would be just, reasonable and adequate to determine market price of the acquired lands at Rs.650/- per Are.

9. The Reference Court, even though came to the conclusion that Rs.1113/- would be the price of acquired lands, had mechanically awarded Rs.290/- per Are without assigning reasons. As observed earlier, price of the acquired lands will be Rs.650/- per Are and, therefore, the award of the Reference Court deserves to be modified to the extent that the claimants would be entitled to enhanced compensation of the acquired lands at Rs.650/per Are minus the amount awarded by the Reference Court and the Land Acquisition Officer, i.e. Rs.290/- per Are and, therefore, the claimants would be entitled to additional amount of compensation at Rs.360/per Are with all the statutory benefits under Section 23(2) and 23(1-A) and interest under Section 28 of the Act.

10. So far as direction given by the Reference Court to deduct 5% government share from the awarded amount in case of new tenure lands is concerned, we notice that the

Supreme Court, in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme Court 904, had held that deduction from the market value under Section 43 of the Bombay Tenancy and Agricultural Land Act, 1948, is not permissible. It has been held that sanction required under Section 43 of the said Act is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee, etc. as envisaged under Section 43(1) but, when the State exercises its power of eminent domain and compulsorily acquires the land, question of sanction under Section 43 does not arise, and deduction of 1/3rd of market value under Section 43 is not permissible. In view of the mandate given by the Supreme Court, we are of the opinion that the Reference Court was not justified in directing that 5% government share should be deducted from the awarded amount in case of new tenure lands and, therefore, the said direction will have to be set aside.

11. Learned counsel for the respondents submitted that the claimants would not be entitled to interest on the amount of solatium as well as on the amount awarded under Section 23(1-A) of the Act in view of the decision of the Supreme Court in the case of State of Maharashtra vs. Maharau Srawan Hatkar, reported in Judgment Today 1995 (2) S.C. 583. However, learned counsel for the appellants vehemently submitted that the above decision rendered by the Division Bench of the Supreme Court is referred to the Larger Bench of the Supreme Court. We may state that, till the Larger Bench decides the case, the decision of the Supreme Court in the case of Maharau Srawan Hatkar (supra) holds the field and, therefore, the appellants would not be entitled to interest on the amount of solatium as well as on the amount awarded under Section 23(1-A) of the Act.

12. As a result of foregoing reasons, all the appeals filed by the appellants are partly allowed. It is held that the market value of the acquired lands of village Khuper Bershan on the relevant date was Rs.650/- per Are. The common judgment and award dated April 30, 1994, rendered by the learned Assistant Judge, Bharuch, in Land Reference Cases Nos. 823 of 1989 to 839 of 1989, is modified to the extent that the claimants would be entitled to enhanced compensation of the acquired lands at Rs.650/- per Are minus the amount awarded by the Reference Court and the Land Acquisition Officer, i.e. Rs.290/- per Are and, therefore, the claimants would be entitled to additional amount of compensation at Rs.360/per Are with all the statutory benefits under

Sections 23(2) and 23(1-A) and interest under Section 28 of the Act. The direction given by the Reference Court to deduct 5% government share from the compensation payable to the claimants in case of new tenure lands is set aside. It is further held that the claimants would not be entitled to interest on the amount of solatium payable under Section 23(2) as well as on the amount under Section 23(1-A) of the Act. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

13. Learned counsel for the appellants made grievance that the respondents be directed to deposit additional amount of compensation awarded by this Court as the appellants are deprived of their only source of income because of acquisition. We, therefore, direct the respondents to deposit the additional amount of compensation with all the statutory benefits in the Reference Court within four months from today.

(swamy)